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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE ADOPTION OF T. S. N.,	)	
PATRICK SCOTT VESTAL,	)	
Appellant-Respondent,	)	
vs.	)	No. 47A05-0701-CV-38
MATHEW SCOTT NORDHOFF,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Richard D. McIntyre, Judge
Cause No. 47C01-0602-AD-12

May 21, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Patrick Vestal ("Vestal") appeals the Lawrence Circuit Court's order granting Mathew Nordhoff's petition to adopt T.S.N., Vestal's biological child. Vestal raises one issue, which we restate as: whether there was sufficient evidence to support the trial court's finding that Vestal's consent to adoption was not required under Indiana Code section 31-19-9-8. Concluding that the evidence established that Vestal failed to significantly communicate with T.S.N. for a period of at least one year, we affirm.

Facts and Procedural History

T.S.N. was born to Vestal and Ingrid Nordhoff ("Mother") in 1996. Vestal and Mother divorced in 1997 and Mother was granted custody of T.S.N. In 2001, Mother married Mathew Nordhoff ("Nordhoff"). On February 23, 2006, Nordhoff petitioned to adopt T.S.N. and Mother consented to the adoption.

However, Vestal refused to consent to the adoption. Nordhoff sought to proceed with the adoption and asserted that Vestal's consent was not required because Vestal had not supported or significantly communicated with T.S.N. for at least one year.

On August 23, 2006, a hearing was held on Nordhoff's petition to adopt T.S.N. On October 3, 2006, the trial court issued its decree of adoption granting Nordhoff's petition. In support of its judgment, the trial court issued the following findings:

> 4. That [Vestal] is the natural father of [T.S.N.] and he has not consented to said adoption but the Court finds that his consent is not needed due to the fact that for a period of more than one year, without justifiable cause, he failed to communicate significantly with the minor child when able to do so nor has he provided for the care and support of the child when able to do so as required by law or judicial decree.
> 5. The Court finds that from the time that visitation stopped in October of 2002 until January of 2006 there was no communication from [Vestal] to his son [] and that [Vestal] made no effort to have such communication other than obtaining a court order permitting supervised visitation provided

> counseling was complied with but made no effort to obtain such counseling.
> 6. That beginning in January of 2006 through March of 2006 [Vestal] did send nine cards and/or letters to [T.S.N.] but the Court finds that the nature of such communication was not significant and more than one year had already lapsed with no communication.
> 7. That [Vestal] failed to pay child support from October, 2002 until the present except for one $50 payment in September, 2003 and that [Vestal] was not incarcerated from May, 2003 until May, 2005 and could have paid support.

Appellant's App. pp. 23-24. Vestal now appeals. Additional facts will be provided as necessary.

Standard of Review

When we review a trial court's ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. In re M.A.S., 815 N.E.2d 216, 218 (Ind. Ct. App. 2004) (citing Rust v. Lawson, 714 N.E.2d 769, 771 (Ind. Ct. App. 1999), trans. denied). "We will not reweigh the evidence but instead will examine the evidence most favorable to the trial court's decision together with reasonable inferences drawn therefrom to determine whether sufficient evidence exists to sustain the decision." Id. at 218-19. The trial court's decision is presumed to be correct, and it is the appellant's burden to overcome that presumption. Id.

Discussion and Decision

Generally, a petition to adopt a minor child "may be granted only if written consent to adoption has been executed by . . . [e]ach living parent of a child born in wedlock." Ind. Code § 31-19-9-1 (1998). However, consent to adoption is not required if for a period of at least one year, "[a] parent of a child in the custody of another person .

. . fails without justifiable cause to communicate significantly with the child when able to do so; or [] knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree." Ind. Code § 31-19-9-8(a)(2) (1998 & Supp. 2006).

As the petitioner, Nordhoff was required to prove by clear and convincing evidence that Vestal's consent to adoption was not required under Indiana Code section 31-19-9-8(a)(2). When we review a judgment requiring proof by clear and convincing evidence, our court "may not impose its own view as to whether the evidence is clear and convincing but must determine, by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence." In re M.A.S., 815 N.E.2d at 210 (citation omitted).

Vestal argues that Nordhoff failed to prove by clear and convincing evidence that he did not maintain significant contact with T.S.N. for a period of at least one year.[1] In support of his argument, Vestal cites to his own self-serving testimony at the hearing concerning his alleged attempts to communicate with T.S.N. Accordingly, his argument amounts to an invitation to reweigh the evidence and the credibility of the witnesses, which our court will not do.

The trial court's finding that there was no significant communication between Vestal and T.S.N. is supported by the evidence. In 2002, Vestal's visitation rights were

[1] Vestal also asserts that the evidence did not establish that he was able to pay child support. However, Vestal fails to further develop this argument, and therefore, his argument is waived. See Ind. Appellate Rule 46 (A)(8)(a) (2006).

suspended because Vestal had been charged with "various drug related offenses" and due to an allegation that Vestal had molested his wife's child. Ex. Vol., Petitioner's Exs. 2 & 3. Vestal was incarcerated for the drug offenses, but released in May of 2003. On April 8, 2004, the court reinstated Vestal's parenting time with the following condition: that Vestal receive counseling from Maria Burks at his expense and successfully complete one month of counseling. With approval from Burks, Vestal would then receive one hour of supervised parenting time every other week. Ex. Vol., Petitioner's Ex. 4. Vestal contacted Burks but never scheduled any counseling sessions with her.[2]

Vestal was incarcerated again in May of 2005.[3] He was still incarcerated on the date of the hearing on Nordhoff's petition. Between April 2004 and May 2005, Vestal made no attempts to communicate with T.S.N. Tr. pp. 12-13. In January of 2006, Vestal began to send cards to T.S.N. This is the only communication Vestal has attempted with T.S.N. since his parenting time was reinstated in April 2004. Tr. p. 17. Under these facts and circumstances, we conclude that Nordhoff established Vestal failed to communicate significantly with T.S.N. for a period of at least one year, and therefore, Vestal's consent to adoption was not required pursuant to Indiana Code section 31-19-9-8(a)(2).

Affirmed.

DARDEN, J., and KIRSCH, J., concur.

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[2] Citing his own testimony, Vestal alleges that he did not seek counseling with Burks because he could not pay the counseling fees of $75 per hour. Vestal was not incarcerated from April 2004 to May 2005. He testified that he was unable to work due to disability. Tr. pp. 39-40. However, he is currently in a work release program through the Department of Correction and is employed at a restaurant as a server. Tr. pp. 45-46.

[3] "Imprisonment standing alone does not establish statutory abandonment. Neither should confinement alone constitute justifiable reason for failing to maintain significant communication with one's child." Lewis v. Roberts, 495 N.E.2d 810, 813 (Ind. Ct. App. 1986).